

1905-012 Chancery Causes A. M. Olinger vs Frankie Maxwell &c  
Lee Co.

Kelly, Barker, Bailey, Jackson

CH - Contract Dispute  
T. Property



To the Honorable H.A.W.Skeen, Judge of the Circuit Court of Lee County, Virginia,

Humbly complaining your orator, A.M.Olinger, will respectfully show to your Honor that heretofore, to-wit, on the 13th day of July, 1901, he purchased from J.N.Kelly and wife, a small tract of land situated in Lee County, adjoining the lands of Martin Olinger on the east and the lands of Frankie Maxwell on the west, the said Maxwell's land being apart of the tract of land owned by David M. Cox at the time of his death, and that part immediately adjoining the lands of your Orator on the west was assigned to Joseph ~~B~~ Cox a son and one of the heirs of the said David M. Cox, all of which is more fully shown by the deed of the said Kelly and wife to your Orator, which is filed herewith as part hereof, marked "Exhibit A".

Your orator will further show your Honor that prior to the 29th day of June, 1900, one Jonothan T.Barker was the onwer by purchase of the two lots which had been assigned in the partition of the lands of David M. Cox to Dolly C. Waddell and Joseph B. Cox and that part of the lot, assigned to C.M.Cox lying south of the right of way of the Louisville & Nashville Railroad; and prior to said 29th day of June, 1900, the said Jonothan T. Barker had sold to J.N.Kelly, from whom your orator purchased as aforesaid, a right of way from the eastern line of the said Kelly's land, running along by the house where the said Barker then lived and where the said Frankie Maxwell now lives, crossing the right of way of the L. & N. Railroad to a lane leading out from the lands of Dona Turner another one of the David M. Cox heirs, and from the mouth of said lane following an old roadway to the present County road on the north side of Powells river, which said right of way was sold and conveyed to your orator by said J.N.Kelly when he sold said tract of land to him, the same being one of the appurtenances to said tract of land. The right of way so sold and conveyed to your orator is fully shown by the red lines on a map or survey of road made by W.E.Thompson, R.W.Orr and A.D.Litton, Viewers sent to locate a road on the application of Martin Olinger, which is filed as a part hereof marked "Exhibit B".

Your orator will now show your Honor that while the said Jonothan T.Barker owned the said land he sold the same to one Frankie or



Frances Maxwell, and not having at that time obtained title to the same, on the 29th day of June, 1900, a deed was prepared, conveying said tract of land to the said Frances Maxwell by Dolly C. Waddell and Charles W. Waddell her husband, Charles M. Cox and Valera Cox his wife, Jonothan T. Barker and Alice Barker his wife, and Joseph B. Cox. It will be seen by inspection of said deed a copy of which is here filed as a part hereof marked "Exhibit C", that it is recited as follows: "Be it understood that Jasper Kelly, for himself and family, shall have the right to pass over said two first named tracts of land along the road way that is now used by him and said second party provided he does not leave down fences or leave open gates that may be erected thereon and provided he shall bear his portion of the expense of keeping up said road and gates &c."

This deed in that form was not acceptable to Mr. Barker, because of the fact that it limited the right of way thus reserved to Jasper N. Kelly and his family, and that it limited it further to the two first named tracts and did not also reserve it through the third tract mentioned in said deed, and in that form he refused to sign it without a further agreement, and it was then suggested by C.D. Bailey the notary public who took the acknowledgement of the deed from the said Barker and wife and C.M. Cox and wife, that the same end could be attained by an agreement upon the part of Frances Maxwell and J.C. Maxwell her husband granting said right of way to the said J.N. Kelly, and thereupon the said Barker and wife signed and acknowledged said deed and the said Frances Maxwell and her husband signed a paper by which they granted <sup>or contracted to grant</sup> to the said Kelly a right of way through their land to the public road, upon the terms that the said Kelly should not leave open the gates across <sup>it</sup> and should do his proportionate part in the keeping of said road in repair. This paper was never recorded, but the same was delivered by the said Kelly to your orator at the same time he conveyed said land to him. Said paper or agreement was placed by your orator in the hands of J.C. Noel at the time proceedings were being had by Martin Olinger to establish said road and he is informed by said Noel that he has lost or mislaid said paper, so that the same cannot now be found and filed as a part hereof.

Your orator will now show your Honor that at all times, since he became the purchaser of said land and the owner of said right of



way that he has been careful to keep said gates closed and that he has been ready and willing at all times to do his proportionate part in keeping said road in proper repair and that he is still willing to do so.

Your orator will further show your Honor that since he became the owner of said land for some reason, unknown to him the said Frances Maxwell and her husband have refused to allow him to pass over said roadway, and they still refuse to allow him the use thereof although he is will and has frequently offered to do everything upon his part required to be done by the said agreement aforesaid entered into between the said Maxwells and J.N.Kelly.

Now the object of this bill is to enjoin and inhibit the said Frances Maxwell and her husband from closing up said road way and refusing to allow your orator the use of the same, and to specifically execute the contract made by and between the said Frances Maxwell and J.C.Maxwell her husband, and the said J.N.Kelly, and to compell them to make and execute a deed conveying said right of way in accordance with their said contract upon the terms however that your orator and those claiming under him shall comply upon their part with the terms of said ~~agrdement~~ agreement by keeping said gates closed and rendering their part of the services necessary to keep said road way in repair; and for this purpose he makes the said Frances Maxwell and J.C.Maxwell her husband the parties defendant to this bill and he prays that they each be required to answer the same but they need not do so under oath, that being expressly waived and that upon a final hearing the said Frances Maxwell and J.C.Maxwell her husband and all other persons be perpetually enjoined and inhibited from closing up said road and prohibiting the use thereof to your orator and thos claiming under him, and that they be compelled to execute such deed or contract as will secure said road way and right of passage to your orator and those claiming under him, forever, and if in anywise mistaken in this his special prayers then he prays for full general relief.

W. K. Hopkins } p.2.  
Duncan + Criddle



Plffs. Costs  
Recorded;

Clark	\$5.11
Atty	15.00
Tax	1.50
Shff	1.00
Wils.	6.60
J.P.	6.00
<hr/>	
	\$35.21

A. M. Olinger  
v. { In Chancery  
Frankie Maxwell et als

— Bill —

Filed April 26, 1905.  
H. S. Ewing.

1905-1st May Rules-  
Bill filed. Sp. executed & D.N.  
" 2nd May Rules.  
D.N. Confirmed &  
cause set for  
hearing-

Decree Final Dec 7.  
1905.



Frankie

A. M. Olinger,

Plaintiff

Vs.

In Chancery

Frankie Maxwell, et al,

Defendants.

~~~~~

The joint demurrer and answer of Francis Maxwell and J. C. Maxwell to a bill of complaint exhibited against them in the Circuit Court of Lee County, Virginia by A. M. Olinger, filed on the 26th day of April, 1905,.

Said respondents say that said bill is not sufficient in law to require them to answer, and therefore they demur to said bill, and pray judgment on their said demurrer, and not waiving their said demurrer, but insisting thereon they answer and say, if further answer be required of them that they suppose that it is true that the said complainant A. M. Olinger on the 13th day of July, 1901, <sup>did</sup> purchased from one J. N. Kelly and wife <sup>the lands in the bill mentioned</sup> adjoining the lands of Martin Olinger on the east and the lands of your respondents Frankie Maxwell on the west, and that the deed filed with said bill of complaint marked exhibit "A" specifically describes the tract of land purchased as aforesaid. It is also true that your respondent's land is a part of the tract of land owned by David M. Cox at the time of his death, and that the part immediately adjoining the lands of the complainant on the west was assigned to Joseph B. Cox, a son of one of the heirs of the said David M. Cox. It is further true that one Jonathan T. Barker had an oral or verbal contract with certain of the said Cox heirs for the land owned by your respondent, and that he contracted the same to your respondent, and that on the 29th day of June, 1900 the said Jonathan T. Barker and wife and Ollie Waddle and Charles W. Waddle her husband, Charles N. Cox and Valera Cox his wife and Joselb B. Cox conveyed said lands to your respondent, all of which will more fully appear by inspection of said deed, a copy



of which is filed with said complainant's bill, marked "Exhibit "C". Your respondents further say that they suppose that it is true that some time prior to the deed made to your respondents as above mentioned on the 29th day of June, 1900, the said J. N. Kelly obtained from Jonathan T. Barker some kind of a contract for the use of a road as described in said complainant's bill, or part of it ~~on~~, but what the provisions of the said contract were your respondents do not know, having never seen said writing, but they are informed that it conveyed only to the said Jasper <sup>N.</sup> Kelly and his family a right to pass over said land, or a portion thereof, but these respondents emphatically deny that the said contract between Barker and Kelly conveyed or ~~vey carried~~ with it any right of way over said land to the assigns of J. N. Kelly, at least they deny ever having any knowledge of such a contract prior to the execution and delivery to them of the deed aforesaid executed on the 29th day of June, 1900, and as is set forth in exhibit "C", and no such writing or contract was upon record, and therefore if any such contract did exist at the time, of your respondents having no knowledge of the same, and the same not being a matter of record, your respondents are informed and here allege that they were innocent purchasers, and are in no way bound thereby. It is further true as will be seen by inspection of exhibit "C", that the following reservation or recital was made in the deed to your respondent. " Be it understood that Jasper Kelly for himself and family shall have the right to pass over ~~the~~ said two first named tracts of land along the road way that is now used by him and said second party provided he does not leave down fences or leave open gates that may be erected thereon, and provided he shall bear his portion of the expense of keeping up said road and gates &c." But certainly this recital or reservation does not carry with it the right for the assigns of J. N. Kelly to pass along said road, but on the



contrary it limits the right described and specified ~~in~~ the said Kelly and family.

These respondents deny the allegation that said deed to them from the said Jonathan T. Barker and said Cox heirs was not acceptable ~~of~~ to the said Barker, because of the said fact that it limited the right of way to the said Jasper Kelly and his family, but the same was acceptable to said Barker except that he wanted the said right of way to let said Kelly and family ~~to~~ pass over each tract of respondent's land, and he executed a deed to your respondent with a full knowledge of what was therein contained. And these respondents deny that said Barker ever refused to sign said deed without a further agreement as to the right of the said ~~said~~ Kelly and his assigns to pass through said land, nor was it suggested by C. D. Bailey, a Notary Public who took the acknowledgement of the said deed from the said Barker and wife and C. M. Cox and wife that the same end could be obtained by an agreement upon the part of your respondent granting a right of way to the said J. N. Kelly, but if any such suggestion was ever made by the said C. D. Bailey, it was never made known to these respondents and they further emphatically deny that they ever entered into any kind of a contract with J. N. Kelly, granting or contracting to grant to the said Kelly a right of way through their lands to the public road; except that they did agree in writing to allow the said Kelly and family to pass over each of their said tracts of land on the same terms and conditions as set out in respondents deed from the Cox heirs, nor did they ever sign any paper purporting to be a contract with the said J. N. Kelly and his assigns for any such right upon conditions that said Kelly should not leave open the gates &c., and that he should do his proportionate part <sup>keeping</sup> said road in repair, or upon any other conditions other than as above named, nor did these respondents ever deliver to the said Kelly any such paper or agreement as claimed in said bill. These respondents further deny that any such paper or agreement was ever placed by said complainant in the hands of J. C. Noel, either at the time proceedings were being had by Martin Olinger to establish a road across respondent's land, or <sup>at</sup> any other time, but these respondent are informed that the writing claimed in said bill of complaint to have been placed in the



hands of the said Noel, was the contract between J.N.Kelly & Janathan B.Barker or a paper purporting to be a contract between said Kelly and Barker. Your respondent<sup>snow</sup> denies that the said J. N. Kelly ever granted or conveyed to the said complainant either by a deed of the 13th day of July, 1901 between said Kelly and the said complainant and filed with the said complainant's bill, marked exhibit "A", or in any other manner ~~convey~~ to said complainant a right to pass over your respondent's land. Your respondent will now show unto your honor that the language of the deed from J. N. Kelly and wife to said complainant and filed with his bill of complaint, marked exhibit "A" is identically the same language of the deed from James B. Wilson, Dellie A. Wilson and Pruda Wilson bearing date of July 13th 1901, to the said J. N. Kelly, conveying to the said Kelly the lands mentioned in said exhibit "A". The language of which deed ~~of~~ said Wilsons to said Kelly is as follows:" This deed made on ~~the~~ July 13th, 1901 between James B. Wilson and Dellie A. Wilson, his wife, ~~James B. Wilson~~ and Pruda Wilson, of the first part all of Lee County, Virginia, and J. N. Kelly of the second part of the above county and state, witnesseth, that for and in consideration of \$160.00 in hand paid, the receipt of which is hereby acknowledged, the said first party herby do grant, unto the said second party all their right title and interest in and to the following described property, to-wit; adjoining the lands of James M. Olinger, on the east and north, adjoining the lands of James B. Cox on the west and the right of way of the L. & N. Railroad Company on the south. Together with the right to free access to a spring on Charles Waddle's land near said railroad, and the said first party covenants to warrant generally the lands hereby conveyed. Said land being in the county and state aforesaid on the north side of Powell's River, and on the south side of Stone mountain.

In witness whereof they have here set their hand and seal the date first here unto written."

James B. Wilson, (seal)

Dellie A. Wilson, (seal)

<sup>her</sup>  
Pruda Wilson, (seal)  
mark.



Upon examination and comparison of exhibit "A" filed with said complainant's bill and the deed of the said Wilsons to said J. N. Kelly, as above set out in extenso, and a copy of which will be filed if necessary, the same being of record in the clerk's office of the County of Lee in deed book 37 and page, 512, <sup>it</sup> will clearly show unto the court that the conveyance made to the said complainant by the said J. N. Kelly is only such conveyance as was made to said Kelly by said James B. Dellie A, and Pruda Wilson, and in no way grants or conveys or undertakes to grant or convey any right of way across your respondent's land. These respondents are advised and so state that they are informed that the court will not undertake to specifically execute any oral or verbal contract that the said complainants may have had with said J. N. Kelly, or undertake to enforce against your respondent any <sup>such</sup> contract that was contemplated to have been made between the said complainant and the said J. N. Kelly, especially when the same pertains to real estate and effects the rights of these respondents when they were in no way a party to the said contract or agreement. Your respondents are advised and here allege that the recitals in the various deeds exhibited in this cause, both with the complainant's bill and this answer will more clearly show what was contemplated, and what the contract really was between the parties. These respondents will further say that they have never at any time refused to allow said complainant to pass over said road, not because they had any right to do so, or that he had any contract permitting him to do so, but that <sup>they</sup> have permitted him, as a neighbor, to pass over said land as a matter of accommodation to him, but they do say they have refused to allow some of his renters, who were living on said land, the right to pass over said road, because said renters have made themselves obnoxious to your respondent and his family, And now having fully answered said bill or so much thereof as they are advised it is material for them to answer, and denying all the allegations of the same not herein specifically admitted or denied, prays hence to be dismissed with their proper costs &c.

*Ort & Nail for recording*



R. M. Clinger,  
vs. } Answer.  
Frankie Maxwell, et al.

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Filed May 16, 1905 in  
open Court.  
H. E. Ewing Clerk



A. M. Olinger - - - - - Plaintiff,  
Vs. In Chancery.  
Frances Maxwell et al - - - - - Defendants.

This cause came on this day to be heard on the bill of the plaintiff and exhibits therewith, the answer of the defendants, and general replication thereto, and the depositions of witnesses, and was argued by counsel;

On consideration of all of which, the Court is of opinion that the plaintiff, A.M.Olinger, is entitled to right of way for a wagon road, over the lands of the defendants, from the western end of his land, along the old or formrely used road-way to the public road leading up Powells River, shown on the plat filed as "Exhibit B" with the plaintiff's bill;

It is therefore adjudged, ordered and decreed that the plaintiff, A.M.Olinger is entitled to a right of way for wagon road, over the lands of the defendants, leading from the western line of the lands of the said Olinger, along the old or formerly used road-way, out to the public road, and that the proper location of said road is as shown by "Exhibit B" with plaintiff's bill, upon which <sup>road-way</sup> such gates may be erected as are proper and necessary, and the said A.M.Olinger and those claiming under or through him, are to assist in keeping said road and <sup>gates</sup> in proper repair, and when used by him or those claiming under him, he is to be careful to keep said gates properly closed; and the Court is of opinion, and doth further adjudge that said right of way for wagon road is an appurtenance belonging to the land owned by the said plaintiff;

And the Court doth further adjudged order and decree that the defendants and each of them be, and <sup>they</sup> are hereby enjoined and inhibited from closing up said road-way, or in any way interfering with the said plaintiff or those claiming under him, in the free and full use of said road-way;

And it is further adjudged, ordered and decreed that the plaintiff recover of the defendants his cost in this cause expended, said cost to be taxed by the Clerk, and for which execution may issue.

And this cause is stricken from the docket.



A. M. Olinger  
vs. { In Chy.  
Frances Maxwell et al  
Entered in C/B  
No 8 page 98vc-

Enter this decree  
Dec. 13, 1905.  
J. A. W. Stine



The depositions of Johnathan Barker and otherstakeb  
before me at the Law Office of W. K. Hopkins in the town of Pennin-  
gton Gap, on the 24th. day of July, 1905, pursuant to the notice  
hereto appended, to be read as evidence on behalf of A. M. Olin-  
ger, upon the trial of a certain cause now pending in the Circuit  
Court of Lee County, in which A. M. Olinger is Plaintiff and Fran-  
ces Maxwell and others are Defendants.

Present:- W. K. Hopkins, Atty. for Plaintiff,  
" E. W. Pennington " for Defendants.

Johnathan Barker, a witness of lawful age after being duly  
sworn/deposes as follows:

Q.1. Give your name, age, residence and occupation?

Ans. My name is Johnathan Barker, I and I am <sup>47</sup> years old, I live  
in Washinton County, Virginia.

Q.2. Are you acc you acquainted with J.C. Maxwell and wife, and the  
lands now owned by them?

Ans. I am.

Q.3. You once owned this land/new owned by the said plaintiff and de-  
fendtant, did you not?

Ans. I did.

Q.4. To whom did you convey this land/new owned by the <sup>defendants.</sup> ~~XXXXXXXX~~

Ans. To J.C. Maxwell's wife.

Q.5. At the time you conveyed this land to the dfendants/who owned  
the tract of land lying east of the same, now owned by the the plaintiff

Ans. J.N. Kelly.

Q.6. Please state whether you had conveyed to J.N. Kelly a right of  
way of way running through this Maxwell <sup>land</sup> before you sold and conveyed  
said land to the Waxwell, if so, tells all about it

Ans. Well/first me and Maxwell had talked over our contract, about  
selling the land: and we had not traded yet; we meets Maxwell on the  
railroad: me and Kelly were together. I said to Kelly we had better  
<sup>Maxwell</sup>  
name it, ~~et Kelly~~ about that right of way Maxwell came up, and I said  
to him: I have sold to Kelly a right of way for a wagon road, out to  
tye county road/and if there was any kick about it/new was the time  
before there was any trade closed; if it broke any squares I wanted to  
know it. Maxwell 's answer it cut no figure with him; it broke no trade  
with him. So Maxweel and I closed up our trade afterwards; and it was  
an understanding that J.N. Kelly was to have a wagon road out to the  
county road, where the road was then from J.N. Kelly's line to the  
spring, and was then to be further be settled on between the parties



from the spring to the county road. We had it understood we was to have it fixed in the deed for Kelly to have read out to the county road on the way above stated. Well/when it come to signing the deed which Maxwell had had prepared and brought to me, I got C.D. Bailey to read it to me, as I could not read myself; it was all right until it come to the right of way, and it just give that through the two shares numbered-the Charley Waddle and Joe Cox shares, and stopped. Then I kicked and would not sign the deed, because it did not go to the county road by some forty feet, guessing at the distance. I told him I could not sign such a deed, because I had sold to Kelly a right of way to the County road, and that the deed as prepared did not do it. Then every thing was left in a stand still; then Mr. Bailey said an article could be drawn up and the parties could sign it which would make it as good as if it was in the deed; he said it could be filed in the clerk's office which would make it as good as if in the deed. This was C.D. Bailey who suggested this.

Q.7. Please state whether the form of the deed was further objected to by you on account of its limiting the use of the right of way to use of J.N. Kelly and his family only?

This question is objected to because leading.

Ans. When the deed was read to me, I told ~~thux~~ Mr. C.D. Bailey that the deed did not correspond to the contract with Maxwell, as I had sold to Kelly a right of way out to the county road for a wagon road? I did further object to it because it did not call for the wagon road. Maxwell allowed it would not make any difference as he would not prohibit Kelly from getting to the county road with a wagon. I also told him that it was not for Kelly individually; the right of way was for whoever might live in there or might own the land. The contract between me and Kelly was for the benefit of land, I told him it would help him sell his land. And so they agreed then to take the article that C.D. Bailey wrote, and Maxwell and his wife signed up the paper showing for the road.

Q.8. Do you know what was done with the paper about the road that Maxwell and wife signed, if so what?

Ans. Yes. It was some six or eight days before Maxwell would let his wife sign the paper, and had to talk mean to him before it was signed,



her acout went to her and told her it was best for her to sign it, and so she did sign the paper, in J.N.Kelly's presence, and I turned it over to Kelly satisfactorily. And this is the last I know of the paer.

Q9(.If I understand you/you had previously sold this right of way to J.N.Kelly before you sold you had ~~made~~<sup>made</sup> this rtrade with the Max- wells and Mr?Kelly had paid you for it/<sup>to sign</sup>and you refused the Maxwell deed until they agreed as Mr.Bailey suggested to convey this right of way to Mr.Kelly?

Ans. I sold Kelly the right of way of way for \$5.00 before there was any trade closed with me and Maxwell;and told him so, and I refused to sign the deed until they had executed the paper which Mr.Bailey prepared. This paper was to show for the ebeneift of Kelly and his land for a wagen road out to the county road. This paper was to save the expenses of having another deed made.The deed had already been signed by some of the parties out west;and by my not signing it/it would had to have gone back,so this paper to be signed by Maxwell and wife was suggested to save sending it back/or a new deed made.

Q.10. Did this road as agreed upon between you and Kelly,pass though any orchard?

Ans. No that I remember;it might have passed near one.

Cross Examined.

Q.1. If I understand you,the only diference between the deed which you signed to Fances Maxwell and paper which she signed about the road was to make it call for a wagen road to run out to the county road and not stop some forty feet from it? Is that correct?

Ans. That is correct. The deed called for a passway;and I wanted it to call for wagen road?,out to the county road, and not only to J.N. Kelly but to any one who might own the land, and wanted to use it;it was to be for the benefit of the land.

Q.2. Were you summoned to come here from Washington county to give your deposition?

Ans. Yes.

Q.3. To whom did Maxwel and wife give the paper which Mr.Bailey prepared after they signed it,if you know?



Ans. I can't be positive, whether they gave it to me or gave it to Kelly.

Q.5. In whose possession was this paper the last time you ever saw it?

Ans. In Kelly 's.

Q.\_. If you can not read/how do you know it was the right paper which you saw in Kelly's possession?

Ans. I don't know it was the paper;but Kelly brought me a paper and read it and said it was the aper is all I know about it?

Q.7. Who was the party of the first and party of the second part in this paper?

Ans. I don't remember, as to that.

Q.8. You say Maxwell and wife both signed this paper as Kelly said, tell if you remember what the paper provided Kelly should have in this paper?

Ans. I saw Maxwell go through the motion of signing the paper, and Kelly said Mrs. Maxwell signed it. It provided that Mr. Kelly should have a wagon through the lands which I owned out to the county road, at that time. There were conditions in it that there were gates to be made instead of a lane/and each party was to bear his part of the expense of the gates. I don't know whether this part about the gates was in the paper: they were to decide on this part themselves.

Q. (. How many pages was there of this paper?

Ans. I don't suppose there was more than one.

Q.10. Which was signed first the deed you made to Mrs. Maxwell or the paper about the road?

Ans. Mr. Waxwell signed the paper first, and Mrs Maxwell signed it after I signed the deed?

Q.II. When did you deliver the deed which you signed and to ~~whobox~~  
whom?

Ans. I turned it over to Mr. Maxwell when he brought me the paper signed about the road, and paid up his last payment.

Q.12. Then you know Maxwell turned over to you and not to Mr. Kelly the paper about the road?

[illegible]



Q.I#. Do you know whether you ever had the paper in your possession after Mrs.Maxwell signed it?

Ans. I don't recollect.

Q.14. Do you remember of ever seeing the paper at all after Mrs. Maxwell signed it?

Ans. To the best of my recollection I did;but I donat pretend to say that I did;I don't rec-llct:I wont be positive.

Q.15. Did you own individually the land contained in and described in the deed which you signed to Mrs. Maxwell? If not who else was interested in it, and what was your interest in it if not the entire interest?

Ans. I owned the entire interest in the land; no one else owned any interest except me, that I knew of.

Q.1\_. If you owned the entire interest in the land, why did other parties sign the deed?

Ans. Because it came throug heirship; I had bought the heirs and they had not made me a deed at the time, so we all joined in the same deed, to save making two deeds.

Q.17. How long ago has it been since you made your deed to Mrs. Maxwell

Ans. It has been about five years ago.

The defendant reserves the right to recall this witness if they so desire to further cross examine him.  
And further this deponent saith not.

))))))

Johnathan <sup>live</sup> T Barker  
mark

## Witness claims

One day 50

|                                              |         |
|----------------------------------------------|---------|
| 70 miles travel going and returning I40 at 4 | \$5.60. |
|----------------------------------------------|---------|

C.D.Bailey another witness after being duly sworn deposes as follows:

Q.I. Give your name/age/residence and occupation.

Ans. My name is C.D.Bailey; I live near Olinger/Va./am a farmer and am 49 years old.

Q.2. Are you the C.D.Bailey who took the acknowledgement of the deed of Johnathon T.Barker to Frances Maxwell ~~subscribed~~ <sup>writing</sup> and drew up this agreement spoken of in Mr.Barkers deposition? concerning a road way?

Ans. I am.

Q.3. Please state if you know who prepared this deed of Barker and other to Mrs. Maxwell ?

Ans. I did not see the deed written, but I recognized the writing to be that of Judge E.W. Pennington; and Mr. Maxwell told me that Judge Pennington wrote it.

Q.4. Did Mr. Barker have any objections to said deed as thus prepared if so/state what his objections were to signing it as prepared.  
Ans. He did. On account of the deed not being prepared as he desired.

Ans. He did. On account of the deed not providing for a right of way for J.N.Kelly and he told Maxwell so. He said it was not according to



their contrad~~ct~~. Mr Maxwell did not kick on the objections raised by Barker. They looked on this question as being merely an omission in the deed.

Q.5. What was then done about it?

Ans. After talking the matter over, I told them I thought I could write a paper or contract granting a right of way from maxwell and wife <sup>to J.N. Kelly</sup> and I did so.

Q. 6. Was this writing signed by the Maxwells?

Ans. At this time it was only signed by J.C.Maxwell;his wife was not present.

Q.7. Did you see this writing after it had been signed by both of the Maxwells?

Ans. I did.

Q.8. Do you know where this writing is now at?

Ans. No.

Q.9. Please state if you remember what this writing so signed by the Maxwells purported to grant to J.N.Kelly.

Ans. It granted a right of way for a wagon road through the Maxwells lands along the road commonly used out to the public;it also provided <sup>road</sup> that Mr.Kelly assist in keeping the road and gates and etc ~~prepared~~ repaired;this is about all I remember about the terms of the paper.

Q.10.

Q.11. If I understand you,Mr.Barker required the Maxwells to grant this and convey this right of way which he had previously sold to J.N.Kelly before he would execute the deed?

Ans. That is correct. He signed the deed on condition that the Maxwells would sign the paper which I prepared about the right of way.

Q.12. Do you remember of hearing Mr.Barker say to Mr.Maxwell any thing about this road way being reserved by him for the benefit of others as well as Barker.

Ans. I don't remember any thing about that,if any thing was said about it

Cross examined.

Q.1. Did you see Mrs.Maxwell sign the paper prepared by you?

Ans. I did not?

Q.2. Then from your own knowledge you don't know whether she ever signed it?



We the undersigned hereby grant  
unto J. N. Kelly a right of way  
through or over our lands.  
Said right of way is to be along  
the old road now used to the  
public road and is to be wide  
enough for a wagon road. The  
Said J. N. Kelly is to assist  
in keeping the road and all  
necessary gates &c repaired.  
Given under our hands, This  
July 3, 1900

A.



Ans. I did not see her sign it:and as to my own knowledge I don't know whether she signed it.

Q.3. When and in whose possession was this paper last seen by you?

Ans. It has been one or two years ago in the possession of the plaintiff in this case. This was the on;y time I ever saw it after I wrote it since it was and it was signed by J.C.Maxwell.

Q.4. As near as you can make a duplicate of the writing prepared by you about said write of way.,and file the same herewith as a part of this answer?

Ans. I have prepared a paper which according to my present recollection is a near a duplicate as I cane make. I think it is in effect what theoriginal contained. I mark what I have pröpered "A". as a part of my deposition.

Re examined by plaintiif.

Q. I. Are you acquainted with the handwriting of Frances Maxwell if so state when you you afterwards saw her name signed to this writing spoken of whether it resembled the handwriting of Frances Maxwell.

Ans. I am acquainted with her handwriting, and the paper I saw in possession of Mr.Olinger did resemble her handwriting so far as her name to the same was concerned.

And further this deponent saith not.

-----C. D. Bailey-----

Witness claims one day 50.



J.N.Kelly/another witness of lawful age, after being duly sworn deposes as follows.

Q. Give your name/age residence and occupation.

Ans. My name is J.M.Kelly; Reside in Lee County, Ba. Am a sawyer, and am "37.

Q.". Do you know A.M.Olinger and J.C.Maxwell and Frances Maxwell; and were you acquainted with the lands which each owned on Powells river out of the old Cox estate?

Ans. I am acquainted with said parties. I also know the lands owned by them. I once owned the tract owned by said A.M.Olinger.

Q.3. Did you convey by your deed that tract of land to A.M.Olinger?

Ans. By one deed/I did.

Q.4. Which share of land with reference to the Maxwell land did you convey to said plaintiff.

Ans. The tract I conveyed to Olinger lay on the eastern side of Maxwells.

Q.5. At some time previous to the time that you the Maxwells purchased their lands lying west of yours from Johnathan Barker, did you buy a <sup>way</sup> road fr leading from the west side of your land through the said Maxwell land/out to the public road, if so, of whom did you purchase said right of way?

Ans. I did buy from J.T.Barker for \$5.00 a right of way.

Q.6. If I understand it, at the time you purchased your right of way, the Maxwell land belonged to Johnathan Barker, is that right?

Ans. Yes.

Q.8. When Mr.Barker sold the Maxwells the land through which your <sup>road</sup> road way passed, what provisions if any did he make for your right of way?

Ans. We decided it would be of no use for him to make a separate deed to me for the right of way, but would retain it to me in his deed to Mr.Maxwell.

Q.9. State what steps if any were taken to provide for that right of way?

Ans. Mr.Barker informed me that it was not according to contract in the deed and they also made a separate <sup>paper</sup> giving specifications of the road and where it was to be



Q. IO. Was this before or after Mr. Barker had made Maxwell his deed?

Ans. It was after. Maxwell gave me the paper.

Q. II. Who delivered to you this writing which conveyed to you the road way which Mr. Barker had sold you?

Ans. J. C. Maxwell handed the paper to me; and I took it and looked at it and told him I thought it ought to be all right. Then I handed the paper back to Mrs. Maxwell and she took it and signed it with my pencil, and then she gave it back to me.

Q. 12. When you conveyed your land to the plaintiff here, state what you did with this writing?

Ans. Some time after I sold Mr. Olinger the land I gave him the same piece of paper.

Q. 13. Why did you do this?

Ans. Because he asked me for it.

Q. 14. While you owned this land which Mr. Olinger now owns, did you use this right of way that Maxwells granted you, and were you ever molested in the enjoyment thereof? by them?

Ans. Yes, while I lived on the land, I used said right of way and never was bothered by them in any way?

Q. 15. Did you and Mr. Maxwell or his wife, have any agreement about keeping up said road, if so, tell what it was?

Ans. I don't know that we ever had any contract with them about the matter of keeping up the road; but I when I bought the right of way from Mr. Barker, I was to keep up <sup>help</sup> the road, and did so while I owned the land. I believe it was in the paper which they gave me that I was help keep up the ~~road~~ <sup>road</sup>, but I am not positive about that.

Q. 16. Did you and Mr. Maxwell ever do any work on the road, if so, what?

Ans. Yes; some time in the spring after he got the land, Mr. Maxwell said we needed some gates on the road, and said he would put in saw logs at my mill if would saw it up to make some gates; we sawed about enough to make two gates; Maxwell and my wife's brother was working some for me and I paid him for putting in one gate.

Q. 17. State as best you can how this road way which Mr. Barker sold you was to run and where to?



Ans. It was to commence on the west side of my field/south of my house, then along down by Barker's house to the ~~public road~~ the railroad, then from the rialroad to the county road Barker and I never did settle on the way it was to run. But the piece of writing stated that it was to go along from the railroad down the western line of ~~Maxwells~~ Maxwells line to the river; then up the northern side of the river to the main road on the southern end of his place.

Q.18. Whay kind of road was this to be?

Ans. It was to be wagon road with gates.

Q.19. When you sold your land to the plaintiff in this case, did you intend for Mr. elinger to have tthis said road way?

*Objected to because immaterial. Deal is best evidence of what*  
Ans. I intended Mr. elinger to have all My right/title and interest there, including the road.

Q.20. Did the Maxwells at any time while you <sup>lived</sup> there and up to the time you sold it to Mr. elinger dispute your title to said road?

Ans. No, not to my knowing.

Q.21. Q. State if Mr. Maxwell upon one occasion, told you if you ever sold out your land there, that he wanted to buy this road way from ~~mrk~~ you?

Ans. I am not sure about that; but it seems to me he named something of that kind to me, once.

Q.22. When you purchased this road way from Mr. Barker/state whether you intended the road for only your own special benefit or did you <sup>buy</sup> with a view that this road way would enhance the value ~~ye~~ of your land, and whether or not this was talked between you and Mr. Barker.

Objected to because irrelevant and immaterial.

Ans. It was to be for me and for the benefit of the place also; the right to use it and let it go with the place if I ever sold, that probably it might increase the value of the place?

Cross examined.

Q.1. I show you a paper filed with C.D. Bailey's deposition marked "A"; please examine it, and say whether as you remember the original paper, it is a copy or duplicate of the original paper signed by Maxwells.

Ans.



-II-

Ans. I have examined said exhibit, and it seems to be written pretty much like the original; but it don't specify where all the road was to be put like the original did.

Q. 2. Outside the place where the road is located in said exhibit with Mr. Baileys deposition, does said exhibit contain the meaning and substance of the original paper as you remember it.

Ans. I think does. It was pretty much the same kind of a certificate, as said exhibit.

Q. 3. Did you make A.M.O.;inger a deed to the land which you sold him?

Ans. Yes sir.

Q. 5. How long ago?

Ans. I think it was in July, three or four years ago to the land; I did not deed him the road in that deed at that time; I told him I would make him a special deed to the right of way, and I mean by a special deed a quit claim deed to the right of way. And a few months ago/after they said the a paper about the right of way was lost, they wanted a deed specifying all the land in it and the right of way, and I made him another deed which included the right of way.

Q. . At the time you sold the land to Mr. Olinger what was said if any thing about the right of way?

Ans. He asked me about the right of way, and I told him I did not have a general warranty deed to right of way, and did not want to make a general warranty deed to this right of way.

Q. Was there any thing else said at the time you sold your land about this right of way, if so/tell all that was said and agreed upon between you about it?

Ans. He wanted to know why I did not want make a general warranty deed to it, and I told him that I did not have such a deed and looked like to me it was in a good shape for a law suit some time, could possibly be in the shape it was in, as the deeds were not on record. This is about all I said about; he was to have all my right/title and interest in it.

Q. Was there any agreed time when you should make him a quit claim deed to this right of way?

Ans. No; there was no settled time: I told him I would make at any time he called for it.



Q. When did he call upon you for a deed for this right of way; was it not after you heard these parties were getting into a law suit about it?

Ans. He never called upon me for a deed until after I heard they were getting unto a lawsuit about it.

Q. How long after you had made your deed to Mr. Olinger was it that you gave the paper which the Maxwells signed about the right of way to Mr. Olinger?

Ans. It was year or two; some where along there.

Q. When you sold your land to Mr. Olinger, you did not take into account the right of way and fix any price upon it did you?

Ans. No; I told I would let it go in with the land; I told him I would let him have my claim upon it.

And as to this witness the right is reserved to recall him for further cross examination.

And further this deponent saith not.

Witness claims for one day %.

----- J. M. Kelly -----

The further taking of these depositions by consent are adjourned until Wednesday, July, 26th, 1905 at the same place as mentioned in the caption.

Given under my hand this the 24th day of July/1905.

----- J. J. Quary ----- J.P.



Met pursuant to adjournment at the office of W.K.Hopkins on Wednesday the 26th day of July, 1905.

----- *J. J. Yeary* J.P.

A.M.Olinger another witness after being duly sworn/poses as follows:

Q.1. Please state whether you are the plaintiff in this case?

Ans. I am.

Q.2. Please state of whom you purchased your land adjoining the ~~de-~~  
~~defndats~~ on the east, and this road leading through the ~~dfendants~~ place  
to the public road?

Ans. J. N. Kelly.

Q.3. State what was said between you and the said J.N.Kelly/if any  
thing, about this wagon road, at the time you purchased the same?

Ans? Mr.Kelly came to me and wanted to sell me his tract of land, and

I told him, that it did not suit me to buy it at that time; that it was  
hemmed up in there and I might have trouble getting in and out there.

And Mr.Kelly told <sup>me</sup> I would have no trouble, that he had a wagon road,  
to go in and out to the county road though the defendants place; that he  
had bought the wagon road from Mr.Barker and had given him \$5.00 for  
the road. So we went ahead and traded on them terms. I gave Mr.Kelly  
\$210.00 cash in hand for the land and all his rights, title and interest.

Q.4. In addition to this deed that you have just told about, state  
what other assurances if any Mr.Kelly gave you for this road?

Objected to because the witness has not stated any thing of any  
deed/so that it is improper to assume that he has said any thing about  
a deed from Kelly or any one else.

Ans. He told me that <sup>if</sup> that deed did not cover the road that he would  
give me one that would; and did so.

Q.5. At any time thereafter did Mr.Kelly deliver to you this writing  
mentioned by C.D.Bailey and others in their depositions, signed by  
said defendants, if so, tell about it and as near as you can remember  
what it contained?

Ans. <sup>give</sup> Mr.Kelly did me the paper asked about some time after we traded;  
I can state a little about the paper as to what it contained; the paper  
sated that J.N.Kelly had bought a wagon road through Mr. ~~B~~ Barker's land  
out to the county road; it was signed by both of the Maxwells when it



was turned over to me.

Q.6. Where is that paper now, if you know?

Ans. I gave it to my father and <sup>he</sup> taken it down to Jonesville and gave it to Judge Orr; and I have never seen ~~the~~ paper since I gave it <sup>to</sup> my father. Mr. Orr told me that my father gave it to him.

So much of the foregoing answer which undertakes to tell what the witnesses father did with the paper and what Judge Orr said to him about <sup>it</sup> is objected to because hearsay.

Q. 7. State whether since this writing became lost or mislaid that at your request J.N.Kelly did convey to you by his deed of special warranty this road for which you bring your suit? which is filed with your bill?

The foregoing question is objected to because the deed referred to is the best evidence of what the deed contained, etc. And further because the question assumes ~~to~~ that it has been proved that the paper spoken of has been lost or mislaid, when that fact has not been proved.

Ans He did.

Q.8. State if you remember when the defendants first objected to you using this road and if they still objected at the institution of this suit?

Ans It was something like a year or longer before they objected, by first fencing up a part of the road up the river that I had bought of Kelly. He objected to Mr. Jackson traveling the road or me either. He was still objecting to my using it when I brought this suit. And other part of the road that passes by his house/he put a big pile of rails across it four or five feet high and set out fruit trees in the middle of the road in August.

Q.9. Did you ever do any thing towards <sup>Keep</sup> keeping up this road/if so, state what you did, and if you are now, and have been at all times ready and willing to do your proportionable part <sup>in keeping</sup> of said road in repair?

Ans. No sir, I never worked any on the road myself; I told Mr. Maxwell different times that I was ready to work at any time; and also told Mr. Jackson who lived on the place that he had to use the road more <sup>often</sup> probably than I did, and to work on the road, and to help keep the gates or bars across the road. Mr. Jackson told me he hoped him to put in a pair of



bars at the east end of his land going east into my land; and also hope him work on the road: I saw Mr. Jackson helping him work on the road. And I said to Mr. Maxwell that why did you not let me know that you were going to work on the road and I would have hoped you; he said that was all right that he and Mr. Jackson could do what was to do then and I could work some other time on the road.

So much of the foregoing answer which undertakes to tell what the witness said to Jackson and to detail what took place between he and Jackson is objected to because hearsay and irrelevant.

Q.10. Did either you or any of your tenants so far as you know/ever, leave open either of the gates along said road or any fence if there was any belonging to said road?

Ans. Not that I know any thing about?

Q.11. Do you know or have any idea where that paper is which you gave to your father and signed by said defendants?

Ans. I could not tell at this time where it is.

Cross examined.

Q.1. The deed which Mr. Kelly made to you contained the terms of your contract did it? If it did not contain your contract what part of it was left out of the deed, and why?

Ans. Well ~~it~~, that was the understanding between Mr. Kelly and myself; he thought that would be all right. And if not he would make it right.

Q. What was it you ~~sold~~ bought from Mr. Kelly and took a deed?

Ans. A little tract of land and all that belonged to the land.

Q.3. Did you not buy the land and all his right/title and interest in the land?

Ans. Yes/sir.

Q.4. Is there any thing at all said about the road in dispute in this case, in your deed from Kelly?

Ans. No; I don't know that there was.

Q.5. Some time after you took Mr. Kelly's deed to the land which you had bought from him and some time after Maxwell got to objecting to you and your tenants using it, did you not make an application in court for a road, that is to have a road condemned?



Ans. I just made an application to have a suit brought to open the road. I told Mr.Noel/my attorney, that I had bought the road and had paid for it;and I wanted him to bring suit to open up the road for me, and took Mr.Noel there and showed him the road and he told me that it would be no trouble to open up the road for me. Mr.Noel went ahead and had commissioners appointed to come there and assess damage on the road. They assessed the damage so high that I would not pay it, and then let that suit fall through;and after I let that suit fall/ I brought this suit.

Q.6. To whom did the commissioners assess the damages which they fixed?

Ans. On the left hand side of the road they assessed it to me; and down on the right hand side next to the river they assessed it to my father;

Q. 7. Did they not assess some of the damages to the defendants in this suit?

Ans? They did assess \$125.00 to be paid by me to the Maxwells

Q.8. Did not the commissioners locate the road which they viewed out, right along in the same place which you claim to have bought from Kelly?

Ans. Yes, sir?

Q.9. If you thought you had a right of way over the Maxwells lands by reason of your purchase from Kelly, why did you make an application for a road to be established by the Court over this land?

Ans. It was because Mr.Noel/my attorney advised me to do it that way; he said that was the only way for me get a road.

10. You took Mr.Noel's advise did you until the Commissioners fixed what you thought would be too much for you to pay, and then you refused to go farther with your suit?

Ans.Yes.

Q.11. Was it not after the Commissioners in your first suit had made their report that you got from Mr.Kelly the paper signed by the Maxwells?

Ans. No;it was before they made their report that I got the paper.

Q.12. Why did you get that paper from Mr.Kelly?

Ans. Because I thought it would be a benefit to me for my road.



Q.I3. You do not know what became of the paper after you gave it to your father, except what he and Judge Orr told you about it do you?

Ans. No, sir.

Q.I4. How soon after the Maxwells got Mr. Barker's and others deed to their land was it that they objected to you and your tenants from going over this road?

Ans. It was something like a year, the best I recollect.

Q.I5. Had not Maxwells contracted for the land in some way some year or more before they got deed for it?

Ans. Not that I know of.

Q.I6. How soon after the Maxwells objected to you using this road, was it that you applied in court to have a road established through their lands?

Ans. It was not but a short time, as I remember.

Q.I7. How long has it been since you quit your first suit about this road?

Ans. It has been something like two years ago.

The defendants reserve the right to recall this witness for further cross examination.

And further this deponent saith not.

*A. M. Olinger*

H.C. Jackson/another witness of lawfull age/after being duly sworn desposes as follows:

Q.I. Give your age, residence and occupation?

Ans. I am 69 years old/reside in this county, near Dryden, and am a farmer

Q. 2. Where do you live, that is own whose land, and how long?

Ans. I live on A.M. Olinger's land, and have been living on it about three year.

Q.3. Who lived where the Maxwells lives when you first moved on Olingers land?

Ans. J. C. Maxwell and his wife.



Q. 4. When you moved to where you now reside on Olinger's land, was there a wagon road leading from the plaintiffs land out through the Maxwell land to the county road?

Ans. Yes.

Q.5. Did the plaintiff ever give you any instructions as his tenant about keeping this road in repair/~~is~~ <sup>of</sup> so, state what it was?

Ans. Yes, I was to help keep the road up, when Mr. Maxwell called upon me; the first thing Mr. Maxwell asked me to do, I helped him put in a pair of bars; the next was to help him hall rock and help him fill up a big mud hole; he told me also, the road belonged to Olinger, and that the tenants of Olinger had to help him keep it up. As quick as we got the road so he could get <sup>over</sup> on it, he stopped me from going out on it.

Q. 6. Did Mr. Maxwell at any time, ever ask you to help work on this road when you refused to do so, and did you ever at any time leave open the gates leading out to the road?

Ans No. I did not.

Cross examined.

Q.1. You and Mr. Maxwell have been having some difficulties/have you not with one another?

Ans. No sir; we never had any, except his own cutting up.

Q.2. What is your feelings toward him?

Ans. I think mighty little of him.

Q. 3. How long have you thought little of Mr. Maxwell, and what caused <sup>to</sup> you think little of him?

Ans. It has been about two years since I began to think little ~~of~~ of Maxwell; and my reasons for so thinking of him is because he shut me off from using the road.

Q.4. If I understand you, when you moved on Olinger's land, you had a contract with Olinger to help Maxwell to keep the road, is that correct?

Ans. Yes that is correct.

Q. 5. Who paid you for the work which you did on said road if any one?

Ans. No one. I wanted it for my own use to get out and in.

Q.6. Who asked <sup>you</sup> to work on the road; at the times you worked on it?

Ans. Mr. Maxwell.



Q.7. I suppose when he asked you to work on the road, he told you he thought you ought to help work it out, as you were using it? is that correct?

Ans? Yes, sir. And I did not object to working on it.

Q.8. Where did you live and on whose land did you live next before you went on Olinger's land?

Ans. I lived on Tyler Parson's land, near Dryden.

And further this deponent saith not.

----- *H. C. Jackson* -----  
not sworn to

I hereby certify that the foregoing Depositions of Johnathon Barker, C. D. Bailey, J. N. Kelley, A. M. Olinger, and H. C. Jackson were taken, subscribed and sworn to before me at the time and at the place mentioned in the caption. Witness my hand this the 26th. day of July, 1905.

----- *J. J. Yeary* ----- J. P.



To J. C. Maxwell and Frances Maxwell:

Take Notice that on the <sup>28</sup>~~22d~~ day of July, 1905 at the law office of W. K. Hopkins in the Town of Pennington Gap, Va. I will proceed to take the depositions of C. D. Bailey and others which when taken are intended to be read as evidence in a certain chancery cause now pending in the Circuit Court of Lee County Virginia, in which I am plaintiff and you are defendant and if the taking of same is not commenced on that day, or if begun and not concluded, the taking of same will be continued from <sup>to time from</sup> time and place to place till compleeted. This July, 12th. 1905.

By

Counsel

A. M. Oliver



Legal Notice of  
the within is hereby  
accepted. This July  
15, 1905.

J. C. Hall for  
the defendant.



Wm. C. C. C.  
and S. S. S.  
James M. M.

Filed July 27, 1903.  
H. C. C. C.  
Clark.

Particulars for  
8 hrs - 86.00



The depositions of J.C.Maxwell and others before<sup>me</sup> at the office of J.C.Noel in the town of Pennington, Gap, on the 6th day of December, 1905, pursuant to ageement of the parties by their <sup>as evidence</sup> counsel, to be read in behalf of the defendants in the Chancery cause now depending in the circuit court of Lee County Virginia, wherein A.M.Olinger is the plaintiff and Francis Maxwell and J.C.Maxwell are the defendants.

Present:-W.K.Hopkins,.....Attorney for Plaintiff,  
J.C.Noel,.....~~Att~~orney for Defendantd.

J.C.Maxwell, a witness of Lwful age being sworn deposes and says as follows:

Ques. (1):-State your age, residence and occupation?

Ans.:-I am about 40 years old, reside in Lee County, Va. and am a farmer.

Ques.(2):-Are you one of the defendants in this cause?

Ans:- I am.

Ques (3):-What relation are you to Francis Maxwell?

Ans.:-She is my wife.

Ques.(4):-Who negotiated the trade between your wife and

Johnathan Barker for the lands on which you now reside?

Ans.:- I did.

Ques:- (5):-State what agrement you had with said Barker concerning a right-of-way or a wagon road over said land for one J.N.Kelly, if you had any such agreement?

Ans:-After I had traded for this land, he came to me and wanted to know if I would let Kelly and his family pass through the place I had bought, provided that they would help keep up the expenses of the pass way. So we had the deed drawed up and it went on that way until we got them all, the Cox heirs to sign the deed except Barker and his wife and Charley Cox and his wife, Barker wanted the deed read. He objected to signing the deed because it did not provide for the right of way to go on out to the main road. We agreed to let it go on up the river to the main road, and C.D.Bailey drew up the



article of agreement between us. I authorized Bailey to sign my name to it, on condition that they kept up their part of the road and the gates shut. Barker and his wife then signed the deed, and <sup>I</sup> took the paper home with me. I suppose Kelly afterward got the paper.

Ques: (6):-Can you read and write?

Ans:-I can read print, but cannot read writing, nor can I write.

Ques: (7):-State whether or not that Barker ever raised any objection to signing the deed because it limited the right of way to Kelly and his family?

Ans:-He never did that I know of. He never said any thing to me about it.

Ques: (8):-State whether or not you ever had such a conversation with Barker on the railroad before you closed the trade with him, and in the presence of J.N. Kelly, to this effect: That Barker told you that he had sold to Kelly the right of way for a wagon road out to the county road, and if there was any kick about it now was the time before any trade was closed; if it broke any squares he wanted to know it, and that you answered that it cut no figures with you, that it broke no trade with you; or any words to that effect?

Ans:-No such conversation ever occurred. I never heard that Kelly had ever bought a right of way from Barker until the Olingers began to talk about bringing a suit.

Ques: (9):-State whether or not you ever agreed with Johnathan Barker, J.N. Kelly or any other person, that J.N. Kelly should have a right of way for a wagon road through your or your wife's land that he could sell with his land to others?

Ans:-No, sir:

Ques: (10):-State whether or not at the time of the signing of the deed by Barker and his wife, or at the time that C.D. Bailey read the deed to Barker, that he Barker told you that the right of way was not for Kelly individually; that the right of way was for whoever might live in there or might own the land. That the contract between him and Kel-



ly was for the benefit of the land, and that it would help sell the land; or any other words to that effect?

Ans:-None that I have any recollection of. We had no such contract as that.

QUs:(II)-If Barker had have had any such talk to you, would you have purchased the land?

Ans:-No, Sir. If there was a public road through it I would not.

Ques.(I2)+-State whether or not J.N.Kelly ever helped you keep up the road through your wife's land, or helped to make or repair any gates on said road?

Ans:-I never knowed of it.

Ques.(I3):-Did Henry Jackson ever help you work said road for himself or A.M.Olinger? If so tell all about it.

Ans:Jackson helped me fill one place where the river washed out. He said he might live on Mr.Olinger's place one year and might want to pass out.

Ques.(I4):-Did you ever prevent A.M.Olinger from passing over the road? If so why.

Ans:(I never prevented him from passing with any thing that came off of the place up there.

Ques.(I5)-Did you ever prevent Henry Jackson from going over the road while living on said place (Kelly land)? And why.

Ans.Yes, sir. I thought he was doing me private injuries. He was going over the country cursing me. And I thought he cut my mules tail off.

X Cross examination.

Q.(I):-Mr.Maxwell, please state whether or not, Mr.Barker called your attention to this Kelly road or passway, before he completed and delivered to you the deed for the land.

A. Yes, sir. He asked me if it would make any difference for Jasper, and his family to pass down through, and I told him no, for Jasper and his family.

Q.2- Who prepared your deed for the land, and according to whose instructions was it prepared.

A.Judge E.W.Pennington wrote it. Barker told me to have it done.



Q.-was Mr Barker present when it was written?

A.-No,sir.

Q.-Was this deed as prepared by you and Judge Pennington,acceptable and satisfactory to Mr.Barker,when you presented it to him to be signed?

A.-Yes.Except that the deed <sup>did</sup> not provide for the road to go on out to the ~~road~~.main road.That he objected to .

Q.- Did Mr.Barker refuse to sign the deed in that form?That is as you had it prepared?

A.Yes,Sir.On account of the deed not providing for the road to go on up the river.

Q.-Did you then and there,agree for C.D.Bailey to prepare a paper that would cure the objection raised by mr Barker?If so did Mr. Bailey prepare said paper,and did you then sign it or authorize your name to be signed to it?

A.- Yes,Sir.

Q.- Do you remember word for word just what this paper stated?

A.No,Sir.

Q.-Can you write down for me a general outline what this paper stated?

A.-No,Sir.The understanding was for it to just like the other,one, was my understanding.

Q.R--Please state if you remember,the words used by Mr.Bailey,in the beginning of this paper,and those used by him in the conclusion of it.

A.- I can't,give them,I don't know them,I don't recollect them.

Q.- After J.N.Kelly had taken possession of the land now owned by plaintiff,did you or did you not,put in a log at the saw-mill then being run by Mr.Kelly,to be sawed into gate posts or gate timber to be used on this road.

A.No,sir.If he ever offered to that I do not recollect it.

I bought the lumber for the gates from Mr.Crocket Flanary.

Q.- Did you put in the gates?

A.- Yes,Sir.

Please state who helped you if any one?

A.I got Flogg Orr to help set the posts in one day after I had the



holes dug.

And further this deponent sayeth not.

*J. C. Maxwell*  
*mark*

Francis Maxwell, a witness of lawful age being duly sworn deposes and says:

Q.- What relation to J.C. Maxwell are you?

A.- I am his wife.

Q.- Do you own the land land, over which a right of way is in dispute in this suit.

A.) Yes, Sir

Q.- Were you present when your husband bargained for this land from

Johnathan Barker?

A.- No, Sir.

Q.- Did you ever sign a paper for a right of way over this land for any body?

A.- I signed a paper for Jasper Kelly and his family and nobody else get out over a path to the public road.

Q. Did you sign ~~this~~ paper for J.N. Kelly to have the right to sell this road to any body with his land?

A.- No, Sir indeed I didn't.

Cross-Examination.

Q.- Do you ~~xxx~~ know who wrote the paper that you signed?

A.- No, sir.

Q.- Where was you at when you signed the paper.

A.- At home.

Q.- Who brought it to you and asked you to sign it?

A.- Jasper, Kelly, Himself. And just as friend I signed it to let him go through.

Q.- Was your husbands name signed to this paper?

A.- Yes, sir.

Q.- Did any body read this paper over to you, or did you read it yourself.

A. I don't recollect, whether it was read to me or whether I read it myself, it has been so long.

Q. Do you remember the contents of this paper, or any part of it?

A.- I do not.



Q.- What was done with it after you signed it?

A.- I can't tell you what was done with it.

Q.- Didn't you give ~~xxx xxx~~ give it to Mr.Kelly.

A.Yes,sir.

Q.- Did you make the trade with Mr.Barker for the land,or did your husband make for you?

A/-My husband made it for me.I was at home in Tennessee when my husband made the trade for me.

Q.-You then cannot say what kind of an agreement your husband made with Mr.Barker about the road,can you?

A.- No,Sir.Nothing was ever said to me about any agreement for the road .

Q.- Since Mr.Kelly sold it and moved away,you have objected for other people to us the road have you not?

A.+ I din8t intend to have any body travelling up through there.  
And further this deponent sayeth not.

*Mrs Frances Maxwell*

Virginia Lee County,to-wit:

I,H.C.Joslyn,a justice of the peace in and for the county and state aforesaid do certify that foregoing depositions of J.C.Maxwell and Francis Maxwell,taken subscribed and sworn to before me at the time,place ,and for the purpose therein and t in the caption thereto mentioned.Given under my hand this 6th day of Dec.1905.

*H.C.Joslyn* J.P.



A. M. C. Linger  
20 of Dr. C. L. Henry.  
J. G. Marwell was.  
Deposition for.  
Depto.

Filed Dec. 8, 1905.  
J. H. Ewing,  
Clerk.

J. P. Lee .75  
Paid by the dept.



This Deed made on the 13<sup>th</sup> day of July  
in the year 1891 Between J. M. Kelly  
and Ida L. Kelly <sup>his</sup> wife of the party  
of the first part and C. M. Clinger  
the second part all of the County of  
Lee and State of Virginia

Witnesseth that for and ~~in~~ in  
consideration of the sum of  
Two hundred and ten dollars  
in hand paid the receipt of which  
is hereby acknowledged the parties hereby  
do Grant unto said second party  
all their rights title and interest in  
and to the following described  
property with <sup>the</sup> adjoining lands  
J. M. Clinger the East and North  
and adjoining lands of B Cox  
on the west and on the right of way  
of the L. & N. R. R. Co. on the south  
together with the right to free access  
to a spring on Chas. Waddell's  
lot near said Rail Road and the  
said first parties covenant to warrant  
and generally the land here by  
conveyed said land lies in the County  
and State above said on North side  
of Powell's River and South side of side  
of Stone Mountain



I am witness whereof they have hereunto  
set their hands and seals the date  
first here into written

J. M. Kelly  
Ida G. Kelly

(Seal)  
(Seal)

Lee County, Va. to-wit  
J. R. M. Barnett A Justice of the Peace  
in County aforesaid the State of Virginia  
do certify that J. M. Kelly and Ida G. Kelly  
whose names is signed <sup>the</sup> writing hereto  
in and bearing date on the 13<sup>th</sup> day of  
July 1901 has acknowledged the same  
before me in my County aforesaid  
said given under my hand this  
July the 22<sup>nd</sup> 1901 R. M. Barnett, J. P.

Virginia, Lee County to-wit;

In the Office of the Clerk of the County court for said  
County the 15th. day of July 1901. This deed was Presented,  
and together with the certificate thereto annexed, admitted  
to record.

Teste ; B. M. Morgan --- Clerk.

C. M. Gannon  
J. M. Kelly  
Ida G. Kelly  
(Seal)



A. M. Clinger  
From Deed  
J. N. Kelly & wife

Recorded in Deed  
Book no. 37 page 572

Examined July 16, 1909

Index ed -

Exhibit A.

Clerk 1.25 -

Tax .50

\$1.75 Paid



Reading of this deed is objected  
to because not referred to in plaintiffs  
nor filed as an exhibit therewith at time  
answer and demurrer to bill was filed.  
nor has it been filed as an exhibit  
with depositions of any witnesses



This DEED made and entered into this the 12 day of May, 1905, by and between J.N.Kelly and Ida L.Kelly, his wife, parties of the first part, and A.M.Olinger, party of the second part; all parties of Lee County, Virginia:

Whereas, on the 13th day of July, 1901, the said parties of the first part sold and attempted to convey by deed to the said party of the second part the hereinafter described tract of land, together with all and singular the appurtenances belonging thereto; and,

Whereas said deed of July 13th, 1901, is not explicit in description of the land conveyed, and said parties of the first part be willing and desirous to carry into effect their contract for the sale and conveyance of said land and all things pertaining thereto, Now this deed, therefore, WITNESSETH, that in consideration of the premises aforesaid, as well as in consideration of the sum of \$210.00 heretofore paid the receipt of which is acknowledged in said deed aforesaid, said parties of the first part have this day bargained and sold, and do by these presents grant, bargain, sell and convey unto the said A.M.Olinger all that certain tract or parcel of land adjoining the lands of A.M.Olinger on the east and north, and adjoining the the lands of Francis Maxwell on the west, and the right-of-way of the Louisville & Nashville Railroad Company on the South, it being that part of the tract of land lying on the north side of said railroad right-of-way assigned to C.M.Cox in the partition of the lands of David M.Cox deceased, and which said partition is duly recorded in the County Clerk's Office of Lee County, Virginia, to which partition reference is here made for a more particular description, said land being situate on the north side of Powell's River in Yokum Station Magisterial District, Lee County, Virginia, together with all the appurtenances belonging or in any way appertaining to said tract of land, among which is the right of way, purchased by the said parties of the first part from Jonathan T. Barker through what is now the Francis Maxwell tract or tracts of land and extending from the western lands of the land hereby conveyed by way of the said Francis Maxwell's Dwelling house to the Doha Turner lane, and thence to the public road.

To have and to hold said tract or parcel of land, together with all its appurtenances, including said right of way for a road



unto him the said A.M. Olinger and his heirs forever.

And the said parties of the first part covenant to and with the said party of the second part that they will warrant specially the title to the land hereby conveyed.

Witness the following signatures and seals, this the day and year first above written.

J.N. Kelly (SEAL)  
Ida L. Kelly (SEAL)

Virginia, Lee County, to-wit:

I, W.H. Hopkins a Commissioner in Chancery in and for the County of Lee in the State of Virginia, do certify that J.N. Kelly and Ida L. Kelly, whose names are signed to the foregoing deed bearing date on the 17 day of May, 1905, have acknowledged the same before me in my County aforesaid.

Given under my hand this the 15 day of May, 1905.

W.H. Hopkins  
Comm. in Chancery.



Virginia, Lee County, to-wit:

In the Clerk's office of Lee County, on this the 4th day of May, 1908, this deed was presented, and together with the certificate annexed, admitted to record.

Teste:

*J. L. J. Dunning*, Clerk.

A. M. Olinger  
From Deed.

~~J. N. Kelly & wife~~

Recorded in Deed  
Book 47, page <sup>126</sup>

Examined May 11, 1908

Indexed

Fee \$1.25-  
Tax .50  
\$1.75 Paid-

Witness the following signatures and seals, this the day and

the said party of the second part that they will warrant "specially

And the said parties of the first part covenant to and with

into and the said A. M. Olinger and his heirs forever."



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*J. C. Maxwell and Frank-  
ie Maxwell*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at rules to be held for the said court, on  
the *1<sup>st</sup>* Monday in *May*, 190*5*, to answer a bill in chancery exhibited against *them*

*in our said Court by A. M. Olinger.*

And have then there this writ. Witness, H. C. T. EWING, Clerk of our said Court, at the court-house, the *18<sup>th</sup>*  
day of *April*, 190*5*, and *29<sup>th</sup>* year of the Commonwealth.

A Copy, Teste:

*H. C. T. Ewing*, Clerk.

\_\_\_\_\_, Clerk.



April 24, 1905

A. M. Olinger.

VS

}

SUBPOENA  
IN  
CHANCERY.

J. C. Maxwell et al

H. H. Hopkins & Duncanson & Lindley

To

1st May

Rules.

Lee Circuit  
1905

Court.

Executed by  
delivering a true  
copy of the within  
to Frankie Maxwell  
one to J. C. Maxwell  
delivered to his  
wife at home  
this Apr. 24, 1905  
by J. T. Hughes,  
D.S.  
for  
J. M. Ball.  
S. L. C.